City of Seattle

Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3011537

Applicant Name: Paul Krakow

Address of Proposal: 1936 Harbor Ave SW

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Permit to allow the removal of a 420 square foot (Northern) dock, replace and reduce existing (Fisher) dock and replace the decking of an overwater deck with light-transmitting materials.

The following approvals are required:

Shoreline Substantial Development Permit: to allow the proposed development in a Conservancy Management Shoreline Environment pursuant to Seattle Municipal Codes 23.60.420.

SEPA - Environmental Determination - Chapter 25.05 SMC

SEPA DETERMINATION: [ ] Exempt [ ] DNS [ ] MDNS [ ] EIS

[X] DNS with conditions

[ ] DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site Location and Description

The proposal site is located at 1936 Harbor Avenue SW on the shore of Elliott Bay. The property is currently being used as Salty's Restaurant. The main restaurant dining room structure is situated between Harbor Ave. SW and the shoreline of Elliott Bay. On the eastside of the restaurant is an

overwater deck and on the north side is a 420 square-foot dock referred to as the Northern Dock. South of the restaurant, adjacent to the parking lot, is the 3,681 square foot Fisher Dock. The submerged portion of this site, which is where the proposed work will occur, is located in the Conservancy Management shoreline environment. The property is zoned Commercial 1 (C1) zone with a 40-ft height limit (C1 40' US).

Project Description

The proposed work is to implement a Settlement Agreement with the City of Seattle (dated February 4, 2010) due to the construction of the overwater deck attached to the restaurant. This Agreement was subsequently amended (Dec. 22, 2010) to include the current dock design for the Fisher Dock. The proposed action is to remove the 420 square-foot Northern Dock, renovate the existing overwater deck attached to the main dining room with grated decking material for light transmission to the water below, and replace the existing 3,681 square-foot Fisher Dock with a 2,220 square-foot dock in order to reduce overall overwater coverage. The reduced dock will utilize grated decking as opposed to the existing solid surface/wood decking, and reduce overwater coverage in the nearshore environment, which is critical habitat for salmonid migration, by using a dock design that spans the shallowest water at this location with a 70-foot-long grated aluminum ramp that is 6-feet wide, thus moving the bulk of the overwater coverage in this area to deeper water. This design is a revision from the applicant's original proposal and is based in part on comments from Washington Department of Fish and Wildlife in order to minimize the impacts of the dock on aquatic and salmonid habitat.

Public Comments

One public comment from the Muckleshoot Indian Tribe was received during the official comment period for this project ended on Sept. 14, 2010. The Muckleshoot Tribe expressed concern about potential impacts on fish and aquatic habitat as a result of this project.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposal is located within the Conservancy Management (CM) Shoreline Environment as designated by the Seattle Shoreline Master Program (SSMP). The Shoreline Master Program, Chapter 23.60 of the Seattle Municipal Code, regulates use and development in the City's shoreline districts to implement the policy and provisions of the Shoreline Management Act of 1971 and the Shoreline Goals and Policies.

The SSMP requires that a shoreline permit be obtained prior to the undertaking of any substantial development within a shoreline environment. SMC Section 23.60.030 includes criteria for evaluating a shoreline permit. A substantial development permit shall be issued only when the development proposed is consistent with:

A. The policies and procedures of Chapter 90.58 RCW;

B. The regulations of this Chapter; and

C. The provisions of Chapter 173-27 WAC.

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW

The State of Washington Shoreline policies (RCW Chapter 90.58) provide for the control of pollution and prevention of damage to the natural environment, and to protect the resources and ecology of the shoreline over the long term. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. The Shoreline Management Act of 1971 provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle and other jurisdictions with shorelines, adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60 that also incorporates the provisions of Chapter 173.27 WAC. Development on the shorelines of the State is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions.

The City of Seattle Shoreline policies incorporate these goals by reference and include area objectives pursuant to these goals. These policies contemplate protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

As discussed below, the City's Shoreline policies encourage public access and minimization of adverse impacts to the natural shoreline environment as well as fish migration routes. The proposal to remove and upgrade the existing overwater coverage at this location is consistent with the Shoreline objectives. Thus, this proposal is consistent with the policies and procedures of the RCW Chapter 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of Section 23.60.064 SSMP require that the proposed use(s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) be permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required. The proposed dock removal and replacement is permitted outright in the underlying commercial zone as accessory to the restaurant use, which is allowed.

SSMP 23.60.004 - Shoreline Policies

Policies governing approval of development in shoreline districts are set out in the Land Use Element of the Seattle Comprehensive Plan and SSMP Section 23.60.220 Shoreline Environments Established. Seattle's Comprehensive Plan Shoreline Goals and Policies encourage public access along shorelines. The purpose of the CM shoreline environment is to conserve and mange areas for public purposes, recreational activities and fish migration routes. While the natural environment need not be maintained

in a pure state, developments shall be designed to minimize adverse impacts to natural beaches, migratory fish routes and the surrounding community.

This project will result in reduced impacts to the aquatic environment through reduction in overwater coverage and predator habitat for salmonids, and increased natural light to the critical nearshore environment. Therefore, it is consistent with adopted Comprehensive Plan policies.

Shoreline Development Standards

The proposed project is located in the CM Shoreline Environment.
Pursuant to the Seattle Shoreline Master Plan, the proposed action is subject to:

1. the general development standards (SSMP 23.60.152); and,

2. development standards for uses in the CM environment (SSMP 23.60.450).

1. SSMP 23.60.152 - General Development Standards for all Shoreline Environments

General standards for all uses and development in all shoreline environments are established in SMC Section 23.60.152. Generally, these standards require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity, in order to have minimal impact on the shoreline environment. The following general development standards are relevant to the proposed project:

A. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.

B. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.

D. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

E. All shoreline developments and uses shall minimize any increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Control measures may include, but are not limited to, dikes, catch-basins or settling ponds, interceptor drains and planted buffers.

H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.

I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.

J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

L. All shoreline development shall be located, constructed and operated so as not to be a hazard to public health and safety.

N. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.

O. Navigation channels shall be kept free of hazardous or obstructing development or uses.

P. No pier shall extend beyond the outer harbor or pierhead line except in Lake Union where piers shall not extend beyond the Construction Limit Line as shown in the Official Land Use Map, Chapter 23.32, or except where authorized by this chapter and by the State Department of Natural Resources and the U.S. Army Corps of Engineers.

The project has been reviewed and revised to meet the general development standards relevant to this proposal. The proposal will result in reduced overall overwater coverage from existing conditions due to the removal of the Northern Dock and the reduced size of the new Fisher Dock. The project will also result in increased natural light to the nearshore environment by the revised design for the Fisher Dock and the light-transmitting grating material that will be used for the renovated deck and new decking for the Fisher Dock replacement. The proposal complies with standards in that the proposed shoreline activity is designed, proposed to be constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity, in order to have minimal impact on the shoreline environment.

2. SSMP 23.60.450 - Development Standards in the CM Environment.

Permitted uses in the Conservancy Management (CM) are contained in SSMP Subchapter VIII, Part 1, in sections SMC 23.60.420 through 428. The existing docks and deck are permitted as accessory to the existing established eating and drinking establishment (restaurant) use at this location.

The proposed aluminum ramp and floating concrete float dock to replace Fisher Dock are well below the allowed 30 foot height limit in the CM Shoreline Environment. Lot coverage is well below the 35% lot coverage limit in the CM Environment. The proposed dock is intended to allow public access to the water, so the requirements for public access are also met. This proposal is consistent with the development standards of the CM Shoreline Environment.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 WAC sets forth permit requirements for development in shoreline environments, and give the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The proposed shoreline substantial development permit for this floating dock to be located in an established public park is **CONDITIONALLY GRANTED.** Shoreline Substantial Development conditions are listed below.

ANALYSIS - SEPA

Disclosure of the potential impacts from this project was made in the following document: the Environmental Checklist dated Aug. 5, 2010. The information in the SEPA checklist and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-Term Impacts

The following temporary or construction-related impacts are expected: temporary increase in noise levels, increase in water turbidity levels, increased levels of fugitive dust and fumes from the construction equipment, disturbance of shorelines and displacement of some fish and wildlife species due to increased water turbidity levels and increased noise from the construction activities. Due to the temporary nature and limited scope of these impacts, they are not considered significant

(SMC 25.05.794). Although not significant, these impacts are adverse and, in some cases, mitigation may be warranted.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Seattle Noise Ordinance (construction noise); and State Air Quality Codes administered by the Puget Sound Clean Air Agency (air quality). In addition, Federal and State regulations and permitting authority (Section 10 Permit, 404 Permit from the Army Corps and HPA permit from Washington Department of Fish and Wildlife) are effective to control short-term impacts on water quality. Compliance with these codes and/or regulations will lessen the environmental impacts of the proposed project.

The proposed construction work will take place in and adjacent to the waters of Elliott Bay. Additionally, construction material will be delivered by barge over-water. With the proposed work taking place in and adjacent to water and the delivery of construction material taking place over-water, there exists the potential for debris and other deleterious material to enter the water during this proposed work. Best Management Practices (BMPs) should be employed to decrease the probability of debris or other deleterious material from entering the water during the proposed work. A boom should be deployed around the construction area to contain any debris that enters the water during construction. At a minimum the floating debris that enters the water during construction should be collected once per day. This material should be contained on site and then disposed of at the appropriate upland facility. General in water construction activity will be restricted to the times allowed by the Army Corps Engineers and Washington Department of Fish and Wildlife permits.

Construction material and equipment pose some potential danger of water and nearshore contamination and shoreline erosion. The contamination from spills could lead to both water quality and aquatic habitat damage. In order to be prepared to provide a fast and effective response to spills or other actions which cause new contaminants to be introduced into the shoreline environment, it is necessary to condition the project to require that prior to commencing construction emergency containment procedures be developed and all necessary equipment be stocked on the site. It is also warranted to require the use of BMPs to minimize erosion along the shoreline caused by storage and staging construction material in this area.

No further SEPA conditioning of potential short-term impacts appears to be warranted.

Long-Term Impacts

Long-term or use related impacts are also anticipated from the proposal and include the continued existence of the overwater deck and the replaced Fisher Dock. These long-term impacts are potentially adverse without mitigation; therefore, merit a detailed discussion of the impacts and the required mitigation.

Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit Elliott Bay including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to take place in Elliott Bay which is part of the migration corridor of chinook salmon. According to the City of Seattle's Shoreline Characterization report, chinook, chum, and pink salmon are found in shallow waters (less than 30 feet), within 6 to 10 feet of the water's surface, and may occur either along shallow shorelines or over deeper water along piers or steep shorelines. Juveniles typically use the shoreline to prey on an array of benthic, epibenthic, and pelagic organisms, while adults feed on forage fish.

Clearly identified long-term impacts on juvenile chinook salmon and the aquatic environment include the continued existence of overwater coverage and the presence of piles. Overwater coverage and piles impact the quality of natural habitat of juvenile chinook salmon by creating shading and providing structure for predators. When juvenile chinook have no shallow water habitat, which provides refuge from predators, during their out-migration they are more susceptible to predation by larger fish; therefore, this decreases their survival.

The applicant has included mitigation measures in the project to offset the impacts of the proposed work and DPD has imposed conditions on this project. These mitigation measures and conditions are listed below.

- Removal of the 420 square-foot Northern Dock.
- Removal of approximately 1,481 square feet of overwater coverage with the reduced size of the replaced Fisher Dock as compared to the existing dock.
- Installation of grated decking for light transmission on the existing deck.
- Installation of grated decking on the new Fisher Dock, as compared to the solid surface decking on the existing dock.
- Redesign of the Fisher Dock to reduce overwater coverage in the shallowest water adjacent to the shoreline at this location.
- No treated decking will be allowed in the new dock and for any replaced decking.

Each of these mitigation measures and conditions are believed to minimize impacts on juvenile salmon habitat at the site and improve the aquatic habitat for juvenile Chinook salmon and other species. Collectively these measures will help eliminate dark areas that exist under the deck and dock, which should in turn allow the juvenile salmon to remain in the shallow water during their migration and reduce the juvenile Chinooks' vulnerability to predation.

DECISION – SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have significant adverse impacts upon the environment. An EIS is not required under RCW 43.21C.030.(2) (c).

[ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

CONDITIONS – SEPA and SHORELINE

The following condition(s) to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

SEPA and Shoreline Conditions

During Construction

1. Refer to any applicable Hydraulic Project Approval or Army Corps of Engineers permit for allowable in-water work timing.

2. Appropriate Best Management Practices (BMPs) shall be employed to prevent deleterious material from entering the aquatic environment during demolition and construction.

3. Remove any existing debris located on the substrate at the project site as feasible including any piles stubs.

4. Appropriate best management practices (BMPs) shall be employed to prevent debris and deleterious material from entering the water during the proposed in-water work. BMPs shall include the deployment of a boom surrounding the construction area, as feasible. The boom shall remain in place for the duration of the proposed work.

    a. The boom shall serve to collect any floating debris, which may enter the water during the construction activities. This floating debris shall be removed from the water daily, stored on-site, and then disposed of in the appropriate upland facility.

    b. If heavy (sinking) debris enters the water during the repair work, the location of the debris shall be documented in a log to be kept through the duration of the project. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during construction.

5. Appropriate Best Management Practices (BMPs) shall be employed to minimize the amount of erosion at the shoreline caused by construction material storage and staging, and the proposed construction work.

6. No treated wood is allowed for the decking material.

7. If toxic material such as any petroleum product enters the water, this material shall be reported to the Department of Ecology, and shall be immediately contained using the appropriate equipment and material.

8. Appropriate equipment and material for hazardous material clean up shall be kept at the site during construction.

9. Piling to be removed shall be completely removed using a vibratory pile driving device. Any depressions in the substrate created by the removal of the piling shall be filled with clean native substrate that is of the same size and type of the existing substrate. Piling that breaks shall be cut 2-ft below the mudline. The exposed end of the creosote treated pile shall be covered with a material cap to prevent creosote from entering the environment, and any depressions in the substrate created by the removal of the piling shall be filled with clean native substrate that is of the same size and type of the existing substrate.

10. Any creosote material, pile stubs, and associated sediments, if any, shall be disposed of in a landfill that meets the liner and leachate standards of the Minimum Functional Standards, Chapter 173-304 WAC.

11. No toxic materials, petrochemicals and other pollutants shall enter the surface water during the proposed repair work. Spill prevention and response procedures shall be developed prior to commencement of construction and the appropriate material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.

12. All treated wood shall be professionally treated and completely cured prior to installation to minimize leaching into the water.

13. All lumber to be used for the project shall meet or exceed the standards established in "Best Management Practices for the Use of Treated Wood in Aquatic Environments" developed by the Western Wood Preservers Institute http://www.wwpinstitute.org/.

For the Life of the Project

14. Maintain the shallow water and nearshore area clear of debris during the life of the project.

Signature: (signature on file) Date: May 19, 2011
Ben Perkowski, Fisheries Biologist/Salmon Planner
Department of Planning and Development

BP:jj
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